

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT
CIVIL DIVISION
CAUSE NO.

THE METROPOLITAN SCHOOL DISTRICT)
OF WAYNE TOWNSHP, MARION COUNTY,)
INDIANA,)

Plaintiff,)

v.)

TERRY J. THOMPSON,)

Defendant.)

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JURY TRIAL REQUESTED

FILED

(115)

NOV 15 2011

COMPLAINT

Elizabeth d. White
CLERK OF THE MARION CIRCUIT COURT

Plaintiff Metropolitan School District of Wayne Township for its claims against
Defendant Terry J. Thompson alleges as follows:

I. INTRODUCTION

This lawsuit arises out of an elaborate, complex, and deceitful scheme by the former Superintendent of the Metropolitan School District of Wayne Township (the "District") to defraud the District of millions of dollars in salary and compensation. Unbeknownst to the District, because of the Superintendent's fraudulent scheme, which included false statements to the District's Board, the public and the media, elaborate contractual formulas, and multiple complex contractual changes never discussed with or properly explained to the Board, the Superintendent increased his taxable yearly income from approximately \$218,000 in 2003 to \$2.2 million in 2010 and caused his retirement benefits, severance and deferred compensation to be dramatically increased as well. The District did not learn about or fully understand the extent of the former superintendent's fraudulent conduct until after a full investigation was conducted by independent legal counsel.

II. THE PARTIES AND VENUE

1. Plaintiff Metropolitan School District of Wayne Township (the “District”) is the statutorily created community school corporation for Wayne Township, Marion County, Indiana.

2. Defendant Terry J. Thompson, Ed.D. (“Thompson”) was the District’s Superintendent from April 8, 1996 until December 2010. During most of that period, he was a resident of Marion County. Upon information and belief, he presently is a resident of Hamilton County, Indiana.

3. All of the events relating to this action occurred in Marion County, Indiana.

III. FACTS

4. Wayne Township is on the west side of Indianapolis in Marion County, Indiana, with a population of approximately 134,542.

5. The District provides public education for kindergarten through twelfth grade for residents of Wayne Township, currently educating approximately 16,000 students each year.

A. The Roles and Duties of the Parties

1. The Board of Education

6. The District is governed by a seven-person Board of Education (the “Board”) and each of the Board members is separately elected by the citizens of Wayne Township.

7. A school district’s board represents governance at its most fundamental level. School board members spend long hours to serve their communities and are dedicated to improving the quality of the education of children in their communities.

8. The duties of school boards (including Plaintiff) are complex, complicated and cannot be performed without the assistance from and reliance upon multiple experts trained and

educated in education, law, tax, employee benefits, finance, construction, property management and other professional fields.

9. The Board's statutory duties include, but are not limited to: (a) taking charge and managing the conduct of the educational affairs of the school corporation; (b) the establishment, acquisition, construction and maintenance of libraries, facilities, property, real estate, real estate improvements, buildings, additions to buildings, gymnasiums, auditoriums, playgrounds, playing and athletic fields, offices, warehouses, landscaping, walks, parking areas, roadways, and facilities for power, sewer, drinking water and other utilities; (c) the acquisition of personal property necessary for school purposes, including buses, motor vehicles, appliances, books, furniture and supplies; (d) the employment, contracting, and discharge of superintendents, supervisors, principals, teachers, librarians, athletic coaches, business managers, superintendents of buildings and grounds, janitors, engineers, architects, physicians, dentists, nurses, accountants, teacher aides, and educational and other professional consultants; (e) the approval and payment of all salaries and compensation of all personnel, consultants, advisors and professionals; (f) the implementation of data processing and computer service personnel and support, including personnel responsible for the making of schedules, the keeping and analyzing of grades and other student data, the keeping and preparing of payroll, and other personnel or services as necessary for school purposes; (g) the safe transportation of children to and from school; (h) providing a lunch program (including the establishment of kitchens, kitchen facilities, kitchen equipment, lunch rooms and the hiring of personnel to operate the lunch program); (i) the approval and purchase of textbooks; (j) making budgets, appropriating funds, and the disbursement of the moneys of the school corporation in accordance with applicable law; (k) the review and approval of insurance contracts including employee health plans; (l) approving applications and the

execution of documents necessary for the receipt of money, grants and property from state government, federal government and any other source; (m) the preparation, enforcement, amendment or repeal of rules, regulations, and procedures for the government and management of the District's schools, property, facilities and activities of the school corporation, the school's agents, employees and pupils and for the operation of the governmental body including the creation of policy handbooks, bylaws, and rules and regulations manuals; (n) the approval of all financing including the issuance of bonds, tax warrants, and banking agreements; (o) the initiation and defense of any potential or actual litigation involving the District including the selection of legal counsel and the management of those matters; (p) the review of and rendering the final decisions relating to the expulsion of students; and, (q) the security and safety of personnel and students throughout the District's school system.

10. These monumental tasks must be accomplished during scheduled board meetings which must be conducted in compliance with Indiana law and its open-door policy.

11. In addition to the Board meetings, the members regularly attend bid openings, school events, parent-teacher-administrator meetings, graduations, and a multiple of other events. Board members' addresses, telephone numbers and email addresses are public and they often receive and respond to inquiries and complaints from citizens within Wayne Township and elsewhere requesting information.

12. Board members receive an annual payment of \$2,000 and \$112 per each attended regularly scheduled Board meeting (up to a certain prescribed limit).

2. The Superintendent

13. The most important decision a school board makes is the employment of its superintendent. The superintendent, not the board, is the person who makes decisions on a daily basis and supervises all personnel.

14. The superintendent is the Board's chief expert on the management of a school system and is the board's agent who the board must, by necessity, rely upon in communicating and carrying out board decisions and policies and ensuring that the school district is operated with integrity and in a professional manner. The superintendent is the public face of the school district. A superintendent is in a special position of trust vis-à-vis the board, the school system and the community.

15. A school board acts as a group. Board members do not act individually. Decisions are made in a group during officially called meetings. There is a very clear protocol followed by competent and professional boards and superintendents. Because of the complex and varied issues facing a school district, boards and their superintendents are required to openly and honestly communicate about all issues. Boards should not undermine their superintendents. If individual board members on their own communicate directly with the superintendent's staff, teachers, or others under the supervision of the superintendent, it is confusing to the staff and mixed messages are sent and received by all administrators, teachers, other employees, parents, students, and taxpayers.

16. Superintendents are educated professionals licensed in the education of children and the management of a school system. Board members, by necessity, rely upon the superintendent to keep them fully informed about important matters affecting the school system.

17. The fundamental duty of a superintendent is to build trust and act with integrity in all dealings with a board. Superintendents are well aware of their special position of trust and authority, and their accompanying obligation to communicate fully and honestly with each board member.

18. Superintendents are taught that an effective, trusting relationship between the board and the superintendent takes priority and that building and maintaining a governance team focused on moving a school district forward effectively must be the centerpiece of the superintendent's daily work.

19. It is the superintendent's duty to ensure that the board makes informed decisions. Superintendents must provide information, prepare supporting materials, and make detailed presentations so board members can make well-informed decisions. If the board is not sufficiently questioning a superintendent about a matter of importance, it is the superintendent who must assist, train and support the board in acquiring techniques so that informed decisions can be made.

20. The superintendent is also the key person responsible for communicating budget issues to the board and others. That includes a duty to ensure that the board understands the compensation being paid to the highest compensated professionals in the system. They have a duty to ensure that the Board understands material items in a budget. Multi-million dollar contracts are material.

21. Superintendents well understand that it is their role to ensure that a board must be fully informed and receive critical and important information prior to a public hearing.

22. It is axiomatic that superintendents must avoid surprising the board with critical and important information that should have been communicated prior to a public hearing. The superintendent has a clear duty to protect the board from surprises.

23. Prior to placing an item for action on the board agenda, the superintendent is expected to conduct thorough research on the history, perceptions, financial obligations and expectations of the board concerning an issue of importance.

B. The District's 1995-1996 Search for a New Superintendent

24. In 1995, the District's superintendent resigned and the Board initiated an intensive search for a new superintendent. The Board recognized that the District was facing enormous changes. The school population and community were dramatically changing and Wayne Township's educational programs needed to be improved to reflect the demands of the community for a better educational system. The Board was also acutely aware that it needed to embark upon a major construction and renovation program.

25. Between December 4, 1995 through February 22, 1996, the Board held twenty-one (21) separate executive sessions to fill the District's vacant superintendent position.

26. The first group of candidates included professionals who were already superintendents. No clear candidate emerged and thus, the Board reviewed a second tier of candidates including those who were or had been assistant superintendents, including Thompson.

27. Thompson was interviewed by the Board on several occasions. During the interview process, Thompson became aware that the Board intended to change virtually everything about its system – including its academic, vocational and other programs and improvements all of its facilities. He also knew that the Board members wanted a very open administration and clear communication system. Thompson assured the Board that he would

conduct an open administration with a full and complete dialogue with the Board and community.

28. Following the intensive search and interview process, on February 22, 1996, the Board met and unanimously voted to employ Thompson as Superintendent.

C. Thompson's Contracts and Compensation

1. Thompson's First Contract (1996)

29. Thompson's initial contract, dated February 26, 1996, covered the period from April 8, 1996 through June 30, 1999.

30. The contract was drafted by two separate Indianapolis law firms. Mary Beth Braitman ("Braitman"), a partner at one of the largest Indiana law firms, Ice Miller LLP ("Ice Miller") represented Thompson. The District's school attorney was Jon M. Bailey ("Bailey"), a partner at Bose McKinney & Evans LLP ("Bose McKinney"). Bose McKinney had served as the District's school counsel for decades. A school attorney works closely with the Board, the Superintendent and administrators on a variety of legal issues facing the District.

31. Thompson's first 1996 contract was a very generous contract and would serve as a template for following contracts. Its provisions included:

- a. Thompson would be required to work 227 working days per school year ("working days");
- b. Thompson would receive 9 sick leave days per year which were intended to be used for personal or family illness and not intended as deferred compensation;
- c. Thompson could accumulate unused sick leave days from year to year, but could not exceed a cap of 233 days;

- d. Thompson could transfer up to 50 sick leave days accumulated in his prior employment, but those days were subject to the cap of 233 days; and,
- e. Thompson would receive \$100,000 salary for the first school year of employment increasing to \$119,187 by July, 1999 – a 19% increase in salary over a three year period.

32. Thompson's contract allowed for substantial additional benefits including group health, dental, term life and long-term disability insurance policies for only a \$1 annual premium, an additional \$500 per year for a health examination, \$600/per month auto allowance, a credit card for the purchase of gas, \$5,000 in moving expenses, and reimbursement for business and professional expenses.

33. The 1996 contract also provided for the payments of contributions to the Indiana State Teachers' Retirement Fund ("TRF") that would otherwise be required to be paid by the Superintendent and additional retirement benefits allowable under Section 403(b) of the Internal Revenue Code.

34. Thompson understood that his contract was a public record under Indiana law.

2. The Intense and Substantial Work in the District

35. The Board and its new Superintendent went to work. Immediately, a feasibility study was made regarding the school facilities and multiple other improvements were underway.

36. From 1996 through 2003, together the Board and Thompson built, expanded and remodeled almost every facility in the District, improved educational standards, created new academic programs and, as the Board anticipated, changed and improved almost every aspect of the District's programs and facilities.

37. For example, by April, 1997, the Board was reviewing and approving contracts for the construction, expansion or improvement of its high school and four elementary schools.

38. During this period, the Board approved thousands of contracts, programs, grant applications, bond and financing agreements, policies, employment agreements, bidding petitions, consulting and professional agreements and multiple other documents and actions required to operate the school system.

39. When it came time to select and engage project managers and construction companies for purposes of renovating existing buildings and constructing new buildings, the Board relied upon the advice and recommendations of Thompson. At Thompson's urging and recommendation, the Board selected the project managers and/or construction companies based upon bid processes and by Thompson's recommendation.

40. The District, upon Thompson's request and recommendation, appointed Ice Miller as the District's bond counsel to assist in raising up to \$80 million in public financing for the multiple construction projects. Prior to the selection of Ice Miller, Thompson advised Bose McKinney that he was not going to recommend that the Board use its regular school attorney for the bond work.

41. By law, the Board was required to meet and approve the District's business during public board meetings. Thompson and his staff prepared the agendas for each board meeting along with all materials and information necessary to make decisions on behalf of the District.

42. Because of the overwhelming amount of work and detail involved in the District's business, the Board appropriately relied upon Thompson to identify and explain the important provisions of the various contracts, agreements, proposals, and other documents to the Board.

43. Thompson was well aware that the Board trusted him and relied upon his recommendations and advice. Moreover, Thompson was also aware that the Board relied upon him to provide the Board with the necessary information and facts for the Board to make an informed decision in the best interests of the District on all matters.

44. Thompson repeatedly assured the Board that he was fulfilling his duties to keep the Board fully informed as to all aspects of the District's business and activities. Thompson's constant mantra to the Board was that there were to be "no surprises." No surprises meant that he was providing the Board with all information it required to operate the District.

45. Thompson also knew that the Board would, at Thompson's recommendation, execute a contract without reading all its terms, relying upon Thompson to describe and truthfully explain the salient provisions of a contract.

3. Thompson's 1998, 2000, 2002 and 2003 Contracts

46. Throughout this intense building period in the District's history, the Board and Thompson regularly reviewed, approved, and modified salary schedules and compensation that applied to over 2,000 District employees.

47. The Board also considered requests from Thompson to make what were described by Thompson as relatively minor modifications to his contract. Indeed, the Board approved contracts with what were relatively minor modifications in 1998, 2000, 2002 and 2003.

48. The process followed in each modification to the contract was consistent. Thompson would verbally request that the Board consider a modification to his contract. Based upon Thompson's verbal explanation, the Board would agree to accept or reject his proposed changes.

49. Thereafter, Thompson would advise attorneys at Ice Miller and Bose McKinney of the changes he claimed the Board had approved. The attorneys then revised the contract accordingly based upon Thompson's instructions.

50. Thompson would subsequently present the revised contract to the Board during a regularly scheduled public board meeting for signatures representing that the new contract contained only the changes they had previously discussed and approved.

51. This procedure was followed in connection with Thompson's 2003 contract. Following a discussion with the Board, Thompson advised attorneys of the changes to his contract. The attorneys re-drafted a new contract.

52. Thompson's compensation in his 2003 contract as compared with the compensation provided for in his 1996 contract remained generous:

- a. His annual salary for the 2003-2004 school year increased to \$163,105 which represented an annual 7.8% salary increase;
- b. His working days decreased three days;
- c. His monthly automobile allowance increased from \$600 to \$975 per month;
- d. He continued to receive insurance for a \$1 annual premium along with \$500 for an annual examination and payments to his retirement plans including TRF and his 403(b) plan; and,
- e. New retirement plans allowed under sections 401 (a) and 457 of the Internal Revenue Code were included.

53. Other additional changes made to his contract between the period 1996 through 2003 benefiting Thompson included payments for days worked in excess of the working days, compensation for unused sick days, and reimbursement for expenses.

54. For example, all five contracts between 1996 through 2003 allowed the accrual of 9 sick days per year, with a lifetime cap of 235 days (a two-day variance from the 1996 cap). However, consistent with benefits provided to other administrators in the District, the Board modified the contract to allow Thompson to receive \$57 per day up to a total cap of 235 days. Thus, the maximum potential payment would be \$13,395 if Thompson had accumulated the maximum 235 days.

55. After the first contract, the parties also agreed upon a simple formula to compensate Thompson for any days he might be required to work over the total number of contracted working days. Thus, by 2003, if Thompson worked any days over 224 days, he would be paid a per diem rate for each day worked. The per diem rate equaled his annual base salary divided by the number of working days. Thus, if Thompson worked 225 days (one day over his required working days), he would receive a per diem rate of \$728 (\$163,105 divided by 224 working days which would equal \$728.)

56. On July 7, 2003, the Board approved Thompsons's 2003 contract at a public board meeting.

4. The 2004 Contract

57. Aware that the Board reposed great trust and confidence in Thompson with regard to his employment contracts and compensation, Thompson engaged in a fraudulent scheme to obtain more compensation than he knew the Board would agree to when negotiating his contracts with the Board in 2004, 2005 and 2007.

58. Although he was already highly compensated relative to other Indiana superintendents, beginning in 2004, Thompson began to take multiple, complex steps to increase his total compensation package without providing the Board with complete and accurate information.

59. First, unbeknownst to the Board, Thompson began utilizing his personal attorneys at Ice Miller, not the District's school attorneys at Bose McKinney, to perform legal services relating to employee benefit plans. Thus, besides representing Thompson personally, Ice Miller also became attorneys representing the District. In early 2004, Ice Miller was invoicing the District for, among other things, the drafting of the District's master contract for certain IRS approved benefit plans for teachers and administrators.

60. In 2004, Thompson approached the Board and advised that he was beginning to think about retirement and the Board should take steps to prepare for his successor.

61. Thompson suggested that a "Superintendent Emeritus" position be created. Thompson explained to the Board that the purpose of the Superintendent Emeritus position was to give the Board the option of using Thompson's services in a consulting position to help a new superintendent to become familiar with the District, its substantial business and educational operations and the Board, particularly if the new superintendent was hired from outside the District. Thompson explained to the Board that the Board would have the discretion to decide if the District needed Thompson's services after his retirement and, if so, for how long.

62. After receiving verbal approval from the Board that a Superintendent Emeritus position could be created to possibly aid a new superintendent's transition, Thompson instructed Ice Miller to prepare a new contract. Ice Miller drafted language in the contract that the District

“shall employ” Thompson in this position following his retirement, which was inconsistent with Thompson’s direct representations to the Board.

63. In May 2004, Ice Miller attorneys and Bailey exchanged emails and drafted contract revisions based upon Thompson’s instructions. At this time Ice Miller represented Thompson personally and the District.

64. On June 7, the Board first approved the compensation for multiple classes of District employees. Thereafter, the Board considered Thompson’s 2004 contract effective July 1, 2004 through June 30, 2010. Based upon Thompson’s false representations to the Board that the contract was similar to his prior contracts with the only modification of adding the discretionary Superintendent Emeritus position, the Board approved his contract.

65. Contrary to Thompson’s assertions, the revised contract included substantial changes. A new provision was inserted in the contract entitled “Transition to Retirement and Assistant to Successor as Superintendent” that provided Thompson with three new benefits. First, it provided for a lump sum severance payment to be made at his retirement that was equal to 60% of his Medicare wages and tips from his last W-2 statement. Second, he was to receive a payment of \$10,000 and 20 hours of professional services for retirement planning. Thompson never discussed these changes with the Board.

66. Third, it created the new Superintendent Emeritus position whereby Thompson would continue employment for 125 days with the same salary and benefits in effect at the time following his retirement. Although the Board had approved the position in concept, it had not approved it as a mandatory position with specific compensation or for a specific number of days – but only for a possible temporary position at the Board’s discretion, if needed.

67. Thompson did not ask attorneys at either Ice Miller or Bose McKinney to explain the changes in the contract or their significance to the Board.

5. The 2005 Contract

68. In late May or early June 2005, Thompson requested that the Board consider a small increase in his base salary.

69. Contrary to his explanations to the Board, Thompson communicated to his attorneys at Ice Miller that the Board had approved significant changes which would result in substantial costs to the District. These changes were major and completely contrary to all prior contracts.

70. On June 8, 2005 Tara Sciscoe (“Sciscoe”), one of Thompson’s Ice Miller attorneys, emailed Bailey and copying Thompson stating: “at Dr. Thompson’s request I have attached a draft superintendent’s contract of employment for Dr. Thompson that was approved by the Board at its June 7 meeting for your legal review.” Thompson then falsely replied to Sciscoe and Bailey by advising that the Board approved the modifications contained in the draft contract at the June 6th working session and would approve the contract at the June 20th board meeting.

71. On June 20, 2005, the Board held a regular board meeting where it conducted a substantial amount of business. Part of the meeting involved the approval of Personnel Schedules, the 2005-2006 Benefit Schedules for Custodians/Grounds/Operations Personnel/Maintenance/Mechanics/and Bus Drivers followed by the approval of the 2005-06 Administrative/Management Benefits, Cabinet Retention Plan, and finally, the Superintendent’s Contract.

72. Based upon Thompson's recommendation to approve his contract which purportedly contained only minor revisions, the Board approved the contract.

73. Contrary to Thompson's assertions, the 2005 contract contained five major changes that had a significant financial impact on the District and significantly increased Thompson's compensation, none of which had been disclosed to the Board by Thompson.

74. First, Thompson removed the cap on sick day accumulation. From 1996 through 2004 (six different contracts covering a 9-year period), Thompson, like all other administrators, could accumulate up to 235 sick days. In 2005, the cap on sick day compensation was removed from Thompson's contract. This significant change was not set forth in the portion of the contract titled "Sick Leave." Thompson did not inform the Board of this significant change, nor did he direct the Board's attention to new language in the section "Benefits Provided to All Administrators." Section 4(b) of the 2005 contract entitled "Sick Leave" expressly stated that the cap on accumulated sick days remained in place. However, new language was inserted in a different section removing the cap on accumulated sick days.

75. Second, the contract changed the manner in which sick days were compensated. Rather than receiving \$57 per day as all other administrators received, Thompson now received 50% of his per diem rate per sick day. Thus, based upon his 2005 compensation, instead of receiving \$57 per sick day, Thompson would receive \$413 per sick day, which was seven times greater than any other administrator. The contract also provided that the sick leave pay would increase in the following years.

76. Third, Thompson also increased his severance payment in 2005 from 60% of his last W-2 statement to 100%.

77. Fourth, another term was added to his severance compensation. Thompson was to receive an amount equal to his maximum elective deferrals to his 403(b) and 457(b) plans. This addition would cost the district \$36,000. In addition, the contract increased his payment for retirement planning from \$10,000 to \$15,000.

78. Fifth, the contract inserted another unconscionable provision requiring that the District make post-employee contributions to the maximum extent provided under Section 403(b) over a 5-year period following his retirement. This change alone, unbeknownst to the Board, would cost the District to expend over \$240,000 over a five years period following retirement even though Thompson would no longer be providing any services whatsoever to the District. This significant, avaricious change was never discussed with or explained to the Board.

79. Thompson never requested that attorneys with Ice Miller or Bose McKinney meet with or explain the significant changes and associated costs to the Board.

6. The Retention Bonus

80. At the same Board meeting where Thompson's 2005 contract was approved, besides his own contract, Thompson placed on the Board's agenda the review of a "Cabinet Retention Bonus" proposal. According to Thompson, he wanted to ensure that certain key members of his senior staff who were retirement eligible be encouraged to remain with the District.

81. The Board, based upon Thompson's recommendation, approved a \$15,000 bonus to be paid to a limited number of key employees working for Thompson.

82. Unbeknownst to the Board, Thompson then instructed his subordinates to pay him the retention bonus as well. Thompson received that bonus for at least six years thereafter, well knowing that the Board never approved his receipt of a retention bonus.

83. Also, unbeknownst to the Board, Thompson provided the retention plan to Ice Miller, not Bose McKinney, for its legal review.

7. The 2007 Contract

84. Despite the fact that the 2005 contract contained a provision stating that the contract shall not be revisited through June 30, 2010, Thompson returned to the Board in the summer of 2007 requesting some purported minor modifications to his 2005 contract.

85. Thompson presented the need for a new contract by stating he wanted more vacation time, a raise to his annual salary, and compensation for his management of the Emergency Services Educational Corporation (“ESEC”). The Board orally agreed to some increase in vacation time (a decrease in working days) and a modest raise to his annual salary. The Board did not agree to his request for compensation for ESEC Management.

86. Thompson then contacted Ice Miller (attorneys now for both Thompson and the District) and instructed them to draft the changes in a new contract which he falsely claimed had been approved by the Board.

87. The draft contracts exchanged between Thompson, his attorney Ice Miller including Sciscoe, and Bailey contained multiple provisions never discussed with or authorized by the Board. In fact, the draft contract included changes that had been specifically rejected by the Board.

88. First, in 2007, Thompson caused the number of working days to decrease from 220 to 210. This reduction in the number of days was over two times larger than any previous one-time reduction had been. The reduction of the number of working days had two effects. First, it created a larger per diem rate by decreasing the value of the denominator in the per diem formula. Second, it allowed Thompson to receive his per diem rate for any days worked in

excess of 210 days. In 2010, Thompson worked 36.5 days in excess of 210 working days, which resulted in \$99,335.12 in additional compensation.

89. Second, over the specific Board objections, Thompson included a new provision in the 2007 contract entitled “Additional Responsibilities” that provided him with an ongoing payment of \$1,000 per month for several years for the management of the Emergency Service Educational Corporation. This provision was specifically rejected by the Board. By fraudulently inserting the provision in the contract, Thompson received in excess of \$48,000.

90. Third, Thompson increased the amount of his annual physical compensation from \$500 to \$2,500. This provision resulted in Thompson receiving more than \$8,000 in compensation that Thompson never discussed with the Board and despite the fact that he had free health insurance..

91. Fourth, Thompson drastically changed the way his per diem rate was calculated. Previously, per diem rates were calculated by dividing his annual base salary by the number of working days. The new provision required that **all** compensation (annual base salary, 403(b), 401(a) and 457 employer and employee contributions, auto allowance payments, annual health examination allowance, business and professional activity allowance, general reimbursement allowance, technology allowance and ESEC compensation) be divided by the number of working days. This per diem rate was applied to sick days and the number of days he worked in excess of his contract days. Thompson never discussed this change with the Board or explained the exorbitant financial impact which would result from this unusual and elaborate formula.

92. Fifth, Thompson again changed how he was compensated for sick days. Thompson now received 100% of his per diem rate for each sick day. By the time he retired, that equaled over \$2,700 per sick day, an amount 47 times greater than what every other

administrator earned. Thompson never discussed this change with the Board or its financial significance.

93. Sixth, Thompson increased the number of days for his term as Superintendent Emeritus from 125 days to 150 days. The additional 25 days would cost the District in excess of \$44,000. Thompson never discussed this change with the Board or explained its significance.

94. On July 9, 2007 the Board conducted both its annual organization meeting and regular meeting during which it conducted substantial amounts of school business. The Board then reviewed and approved the Personnel Schedules. At that time, Thompson then recommended that the Board approve the Superintendent's Salary and Benefits schedule.

95. During the July 9, 2007 public board meeting, Thompson referring to himself in the third person, told the Board: "Mr. President, Members of the Board, Umm...taking your recommendations to provide the superintendent a 4% increase as we did other personnel as well as some other modifications to his contract. We've worked with Mr. Bailey and he's inserted that into the legal language in the superintendent's contract and we present it tonight for your approval."

96. Rather than the mere "4%" raise that Thompson referred to, Thompson made six major and costly changes to his contract that significantly increased his compensation over \$1 million.

97. At the July 9, 2007 public board meeting, Thompson deliberately misled the Board and the public concerning the value of his contract.

98. Thompson never requested any attorneys from Ice Miller or Bose McKinney explain the significant changes made to his contract to the Board.

8. The Concealment of the Total Compensation from the Board and the Public

99. Thompson took multiple steps to maintain the secrecy of his total compensation.

100. Thompson instructed senior staff against directly communicating with any Board member without his express approval. Thompson exercised an authoritarian management style and did not tolerate disobedience or questioning of his authority and decisions.

101. Thompson instructed a subordinate to never provide his contract to anyone without his prior approval. The subordinate maintained the District's only copy of Thompson's contracts under lock and key. The District's Chief Personnel Officer and Chief Financial Officer, two individuals who should have received these contracts, did not have copies.

102. Thompson made it known to the District's administrative staff that his compensation was a private matter and that all inquiries regarding his pay and benefits were to go through him.

103. Thompson was keenly aware of how his compensation was to be computed and kept track of all payments and distributions in charts and memoranda which he never provided to the Board.

104. At Board meetings where his contract was to be approved, Thompson would, for the first time, present the actual written contract to the Board for signatures. After obtaining the necessary Board signatures, he would collect the originals and all copies of the Contract.

105. On December 21, 2007, Ice Miller attorneys prepared a "Personal and Confidential" memorandum to Thompson's subordinate financial officer regarding "Dr. Terry Thompson – TRF Analysis," providing a detailed analysis and instructive charts explaining Dr. Thompson's compensation. Although the District, not Thompson, paid for Ice Miller's analysis, the memo was given to Thompson and his subordinate only, not the Board. Ice Miller also never

provided this memorandum to Bose McKinney. The subordinate understood that this document was not to be provided to the Board based upon Thompson's actions and the memo having a heading of "**PERSONAL & CONFIDENTIAL.**"

106. At Board meetings, Thompson took steps to ensure that information provided to the Board was done so in a controlled manner. Thompson would often arrange the seating and would assign a subordinate to sit next to each board member so he knew what they were discussing and could limit communication between the Board members.

107. In the fall of 2009, the Indianapolis Star requested Thompson's salary and a copy of his current contract. Thompson directed two members of his cabinet to handle the request. The two individuals never had access to Thompson's contract so they asked Thompson for the information. Thompson advised them that his 2004 contract was the current contract. Thus, they produced a copy of his 2004 contract to the Indianapolis Star along with fraudulent salary information of \$194,989 with \$13,691 in expenses. Thompson's 2009 W-2 reports income of \$541,818.79 in Medicare wages and tips. Thus, Thompson drastically underreported his salary and concealed the multiple significant and costly changes contained in his 2005 and 2007 contracts.

108. On January 5, 2010, Ice Miller attorney Sciscoe provided Thompson's subordinate financial officer with a memorandum explaining Thompson's sick leave compensation in anticipation of his vesting within the next month. The single-spaced, five-page memo provided a detailed analysis of how Thompson's retirement benefits were to be calculated. The memo was marked in bold: "**CONFIDENTIAL AND ATTORNEY CLIENT PRIVILEGED.**" Again, even though the District paid Ice Miller's legal fees to draft the memo, the memo was only shared with Thompson and his subordinate, not the Board or any other

District employee. Significantly, Ice Miller did not forward the memorandum to Bailey or any other attorney at Bose McKinney either. The subordinate again understood that this document was not to be shared with anyone.

9. The Payment of Sick Leave

109. On January 26, 2010, Thompson wrote a public letter which was widely disseminated within the District discussing the fiscal challenges facing the District. According to Thompson, in 2007 the District under his leadership began to address the likely deficiency in revenues and thereafter began reducing the District's workforce by 94 positions and reducing expenditures by \$4.1 million. Thompson advised that State funding for K-12 Public Schools would be cut, resulting in a loss of \$4.5 million to the District's General Fund. Thompson assured the community that the mission of the District was to retain and provide highly qualified teachers in the classrooms who will provide the best possible education to the students. "Every effort has been made to make decisions that have the least possible impact on the classroom."

110. In his letter, Thompson did not advise that he had shown no such restraint with his own compensation. He did not advise the District or the community that since 2007 he had caused an unconscionable, multi-million dollar contract to be awarded to himself which would further cripple the District's budget.

111. Unbeknownst to the Board, just one week later following his letter discussing the reduction in benefits to others, on February 2, 2010, Thompson instructed his subordinates to cause a payment to him of \$855,784 representing his uncapped sick days paid out at the new per diem rate. The enormity of this payment is shocking – particularly as compared to the original compensation formula in his contracts which remained applicable to other administrators of a potential maximum of 235 accumulated sick leave days times \$57 per day, or a total of \$13,395.

112. Thompson never provided the Board with any of the complicated multi-page charts and schedules created by attorneys to advise his subordinate the method of calculating Thompson's sick day payment.

10. Early Retirement Incentive

113. On July 12, 2010, the Board held its annual meeting to discuss various educational and budget matters. One of the items placed on the agenda by Thompson was an early retirement incentive program. The early retirement incentive presentation made to the Board was explained by Thompson as a method of saving money by encouraging older, more highly paid teachers to retire early in exchange for a one-time \$35,000 bonus and replace them with younger, lower paid teachers. All drafts of the early retirement incentive agreement provided to the Board prior to the final approval of the program specifically excluded the Superintendent. The Board was also made aware that the teacher's union approved the early retirement incentive with the understanding that it expressly excluded the Superintendent.

114. On August 2, 2010, the Board conducted a regular board meeting where one of the items on the agenda was the approval of the early retirement incentive agreement. Immediately before the Board's vote on the early retirement incentive, Thompson instructed a subordinate to remove the language excluding the Superintendent from the final document authorizing the retirement incentive program. Thompson never advised the Board that he had caused such a material and unauthorized change to the early retirement policy prior to the vote at the public meeting.

115. Thompson also never advised the Board that Ice Miller was reviewing the early retirement policy, not Bose McKinney.

116. On August 4, 2010, Thompson wrote another “Updated Budget Letter” widely disseminated throughout the District, where he stated that: “The fiscal challenges for public schools in Indiana continue to mount. Since 2007, the MSD of Wayne Township has been analyzing how these challenges affect our district, and we have been adjusting our budget accordingly. Throughout this process, our primary goal has been and continues to be doing everything we can to prevent budgetary cuts from negatively impacting the education of our students.” Thompson advised that the District had made cuts in expenditures of \$8.4 million since 2007 – but that had not been enough. New budget reductions would require including the elimination of After-School Academic Interventions, further reductions in employee positions and reductions in extra-curricular activities. Thompson predicted additional budget cuts but assured his constituents that “We are committed to doing everything we can to avoid this, and are asking for your understanding and support as we continue to provide the very best education for our students during difficult financial times.” Thompson again failed in his duty to advise the District of his multi-million dollar contract and its effect on the budget.

117. In August, 2010, Thompson advised the Board of his intention to retire in December, 2010.

118. In September, 2010, the Board began the process of hiring a new superintendent.

119. Dr. Jeffery Butts (“Butts”), the District’s Assistant Superintendent, was selected.

120. On October 4, 2010, the Board approved the appointment of Butts as Superintendent of Schools.

121. On or about November 1, 2010, a Board member was surprised to learn that Thompson had included himself on the list to receive the \$35,000 early retirement benefit.

122. On November 3, 2010, a Board member questioned Thompson's inappropriate receipt of the \$35,000 retirement incentive. In response, Thompson berated and instructed the Board member that: (a) "You need to talk to me directly, not to other school board members"; (b) "I control Wayne Township, and the Board does what I say. You need to keep your mouth shut"; (c) "You wouldn't be on this school board unless I allowed it. Now I wish I had admonished you"; (d) "I don't need the stinking \$35,000; you can keep your money. Does that make you happy?"; and, (e) "I am going to sue the Board for slander and my attorney is Ice Miller. Jon [Bailey] is your attorney."

123. On or about January 3, 2011, Thompson instructed his subordinates to pay and he received the \$35,000 early retirement incentive even though he had already had a contract providing for substantial and, in fact, exorbitant retirement benefits and the Board expressly disapproved of his entitlement to the payment.

124. On December 28, 2010, Thompson received \$702,737.72 in severance.

125. Besides his receipt of a \$15,000 retention bonus payment in July, 2010, on January 3, 2011, Thompson received a \$35,000 retirement incentive payment.

126. In early 2011, the media again requested Thompson's salary and contract information. Thompson falsely confirmed to the new superintendent that his 2004 contract was the correct and current contract. Upon later learning of the 2007 contract, the new Superintendent contacted the media and provided the correct version.

127. On or around January 31, 2011, the Board requested Bailey to contact Thompson to advise him that the Board wanted to terminate the Superintendent Emeritus position. Thompson advised Bailey that he intended to resign and then asked if the Board was considering criminal charges.

D. Compensation to Thompson and the Attorneys

128. From 1996 through 2011, Thompson received both authorized and unauthorized compensation from the District totaling over \$6 million in gross salary, free health insurance, and many other perks. In addition, he received several lucrative retirement benefits from the District, including over \$1 million in 401 (a), 403 (b) and 457 accounts. Thompson also receives an estimated \$200,000 in annual TRF payments.

129. Despite receiving those substantial funds and while enjoying and receiving great respect and trust from the Board, Thompson never explained the contracts in a manner that the Board, the District's personnel, the public or the media would be able to understand and comprehend. Instead, Thompson, by trust and confidence, lulled Plaintiff into believing his false representations relating to his contracts and compensation.

130. Additionally, Thompson had the District pay for his Ice Miller personal attorney fees for drafting and negotiating the contracts with District funds. He failed to advise the Board that the District was paying for his attorneys.

131. From 1997 through 2011, Ice Miller received over \$600,000 in legal fees from the District, including payment for Ice Miller's representation of Thompson in drafting the exorbitant, complicated and elaborate employment contracts and for its representation of the District in bond offerings, employee benefits, reviews of the retention plan and the early retirement incentives, and other legal work.

E. The Board's Retention of Independent Counsel

132. In February 2011, the Board retained counsel to conduct an objective and independent investigation of the issues and circumstances relevant to the employment contracts with and compensation claimed by Thompson.

133. Following the investigation, the Board for the first time was finally made aware of the truthful terms of Thompson's contracts which had never been appropriately explained to the Board by Thompson.

CAUSES OF ACTION

Count I: Civil Action by Crime Victim

134. The allegations contained in paragraphs 1 through 133 of this complaint are incorporated herein by reference.

135. This is a civil action pursuant to Indiana Code § 34-24-3-1 to recover the pecuniary loss suffered by Plaintiff as a result of Thompson's commission of various criminal acts, which constitute offenses against property pursuant to I.C. § 35-43.

136. Thompson has committed criminal acts in violation of § 35-43 which has caused pecuniary loss to the Plaintiff, including:

- a. criminal mischief, by knowingly or intentionally causing another to suffer pecuniary loss by deception or by an expression of intention to injure another person or to damage the property or to impair the rights of another person, in violation of I.C. § 35-43-1-2;
- b. theft, by knowingly or intentionally exerting unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use, in violation of I.C. § 35-43-4-2(a);
- c. criminal conversion, by knowingly or intentionally exerting unauthorized control over property of another person, in violation of I.C. § 35-43-4-3;
- d. deception by misapplying entrusted property in a manner that the person knew was unlawful or that the person knows involves substantial risk of

loss or detriment to either the owner of the property or to a person for whose benefit the property was entrusted, in violation of I.C. § 35-43-5-3(3); and,

- e. fraud, by acting with the intent to defraud and damaging property, in violation of I.C. § 35-43-5-4(9).

137. As a direct and proximate result of Thompson's commission of the criminal acts described above, the Plaintiff has suffered pecuniary losses.

138. Pursuant to I.C. § 34-24-3-1, Plaintiff requests three times its actual damages, costs of this action, attorneys fees, travel expenses, time spent in connection with filing papers, attending court hearings, and otherwise prosecuting this action, and all other reasonable costs of collection and other damages allowed by law.

Count II: Fraud

139. The allegations contained in paragraphs 1 through 138 of this complaint are incorporated herein by reference.

140. As set forth above, Thompson made false statements of present and existing facts to, and concealed and omitted material facts from the Plaintiff.

141. Thompson continued to make false statements of fact to, and concealed material facts from, the Plaintiff in order to disguise and conceal the nature of his fraudulent conduct from the Plaintiff.

142. Thompson failed to reveal the true nature of his employment contracts and compensation, and omitted material facts of which he knew the Plaintiff should be aware.

143. At the time these material misrepresentations and omissions were made, Thompson knew that they were false or were made with reckless disregard for their truth.

144. Thompson intended for the Plaintiff to rely on his fraudulent and material misrepresentations and omission and the Plaintiff did, in fact, reasonably rely thereon to its detriment.

145. As a direct and proximate result of the Thompson's fraudulent and material misrepresentations and omissions, the Plaintiff was injured.

Count III. Constructive Fraud/Fraud in the Inducement

146. The allegations contained in paragraphs 1 through 145 of this complaint are incorporated herein by reference.

147. Because of the trust and confidence that Plaintiff reposed in Thompson, and Thompson's superior knowledge of his complicated contracts, Plaintiff relied upon and trusted Thompson. Consequently, Thompson owed a duty to the Plaintiff.

148. Thompson made false statements to, and concealed and omitted material facts from, the Plaintiff in order to obtain contracts providing for exorbitant compensation which was never knowingly authorized by the Board.

149. As Plaintiffs' trusted agent and employee, Thompson had a duty to advise plaintiff of the falsity of the statements and to disclose omitted material facts.

150. Thompson violated the duties owed to Plaintiff by making material misrepresentations of past or existing facts and remaining silent about critical information pertaining to his contract and the compensation he would receive, well knowing that such information would be important.

151. Plaintiff relied upon Thompson's representations to its detriment.

152. Plaintiff suffered substantial damages and injury as a proximate cause of its reliance.

153. Thompson gained an unfair advantage at Plaintiff's expense.

RELIEF REQUESTED

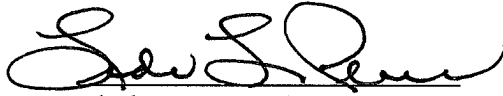
WHEREFORE, based upon all counts of this Complaint, Plaintiff Metropolitan School District of Wayne Township respectfully prays that this Court:

1. Enter judgment that the Defendant pay Plaintiff compensatory, treble, and punitive damages in an amount to be proven at trial;
2. Rescind the 2004, 2005 and 2007 contracts between the District and Thompson and return Plaintiff to the status quo by ordering the Defendant to reimburse Plaintiff for all unauthorized compensation, interest Plaintiff would have earned on the excessive and fraudulently obtained compensation, and attorney fees and costs incurred by Plaintiff in setting aside these fraudulently induced contracts;
3. Order that Plaintiff recover from the Defendant the costs and expenses of this action and award all attorneys' fees and costs of litigation;
4. Order that the Defendant reimburse Plaintiff for all costs incurred in the investigation, prosecution, and collection borne by the Plaintiff in discovering the fraudulent conduct; and,
5. Order any other additional relief as may be equitable and proper.

JURY TRIAL DEMAND

Plaintiff requests this matter be set for trial by jury.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Linda L. Pence', written over a horizontal line.

Linda L. Pence (Atty. No.: 13198-98)

David J. Hensel (Atty. No. 15455-49)

Julie Smith (Atty. No. 27351-71)

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